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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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|---------------------------|---|--------------------|
| SECURITIES AND EXCHANGE |) | |
| COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | Case No: 2:23cv482 |
| DIGITAL LICENSING, a |) | |
| Wyoming corporation doing |) | |
| business as Debt Box, et |) | |
| al, |) | |
| |) | |
| Defendants. |) | |

BEFORE THE HONORABLE ROBERT J. SHELBY

OCTOBER 6, 2023

ZOOM MOTION HEARING

Reported by:
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1 SALT LAKE CITY, UTAH, FRIDAY, OCTOBER 6, 2023

2 * * * * *

3 THE COURT: We'll go ahead and call the case and go
4 on the record. MJ, if you'd start the recording.

5 We'll go on the record in Case Number 2:23-CV-482.
6 This is our Securities and Exchange Commission vs. Digital
7 Licensing and others case. This is the time set for hearing
8 on the defendant's motion to dissolve the temporary
9 restraining order that's in the case.

10 Before I invite counsel to make their appearances,
11 let me -- we have some people who joined us that I don't
12 recognize, and this hearing is not open to the public. It's
13 against judicial conference policy to broadcast proceedings in
14 the United States trial courts. This hearing is proceeding by
15 Zoom as a courtesy to counsel and especially our out-of-state
16 counsel, but it's not open to the public.

17 So I see someone who is connected as just with the
18 name Matt. Would you identify yourself, please? And you're
19 on mute.

20 MR. FRITZSCHE: Yes. I am Matt Fritzche. I'm one
21 of the defendants.

22 THE COURT: Okay. Thank you. And I see Mr.
23 Grundvig noting that.

24 I see someone connected as Jake. Would you please
25 identify yourself?

1 MR. ANDERSON: Jake Anderson, one of the
2 defendants.

3 THE COURT: All right. Thank you.

4 And I see someone connected as, I'm sure I'm going
5 to mispronounce this, and I apologize, Nazir Momin. Would you
6 kindly introduce yourself? You're on mute, if you're
7 speaking.

8 Ms. McNamee, I'm not sure, I think as the host of
9 the hearing you probably can remove someone from the call. If
10 we don't get an answer from Mr. Momin soon, I'll ask you to
11 just remove them from the call, please.

12 All right. Having said that, then, why don't we
13 begin making our appearances, please, beginning with the
14 Commission.

15 MR. WELSH: Good morning, Your Honor. Michael
16 Welsh on behalf of the Commission. With me colleague Casey
17 Fronk, Troy Flake and Tracy Coombs, regional director of the
18 Salt Lake office.

19 THE COURT: All right. And thank you.

20 And let me say, Ms. Coombs, that I apologize for
21 the late notice, and I appreciate you making the effort to be
22 here today. I'm in my 12th year on the bench, and I haven't
23 ever issued an order like that previously. We'll have -- I
24 thought it was important you be hear for this discussion
25 today.

1 Mr. Gottlieb, we'll just go in the same order we
2 went I think in the last couple hearings. Mr. Gottlieb.

3 MR. GOTTLIEB: Thank you, Your Honor. Jason
4 Gottlieb from Morrison Cohen together with my partners
5 Jeffrey Brooks and David Ross. We represent defendants Jason
6 Anderson, Jacob Anderson, Schad Brannon and Roydon Nelson
7 along with relief defendants Business Funding Solutions, LLC;
8 Blox Lending, LLC; the Gold Collective, LLC; and UIU Holdings,
9 LLC.

10 THE COURT: Thank you.

11 And, Mr. Marshall, before we turn to you, I realize
12 there's something I forgot to say while I was making the point
13 a moment ago that it's illegal to broadcast the federal court
14 proceedings. I failed to say that it's also unlawful to
15 record any proceedings in the US District Courts by audio or
16 video or any other means. And so it's unlawful for anyone
17 who's participating in this call as counsel or as a party to
18 record the proceeding. There's one official record of this
19 hearing, and it's the record being prepared by our court
20 reporter here in the courtroom with me. Thank you.

21 Mr. Marshall?

22 MR. MARSHALL: Good afternoon. Thank you, Your
23 Honor. Romaine Marshall from the law firm Polsinelli. I'm
24 here with my colleagues Jose Abarca and Jonathan Schmalfeld.
25 Mr. Abarca is in a conference room with our client Joseph

1 Martinez. One of the other attendees is Travis. You'll see
2 Travis's iPhone. That is our client Travis Flaherty. Thank
3 you, Your Honor.

4 THE COURT: Thank you. I missed others. I see
5 there's a second -- there's a whole second page of this. One
6 moment. Let me see if I know -- I think I recognize it.
7 Well, there's also -- I see somebody who's connected by phone
8 with a phone number 1-516-852-6401. Would you identify
9 yourself, please?

10 MR. YARM: Good afternoon, Your Honor. Alexander
11 Yarm from Morrison Cohen just listening in.

12 THE COURT: All right. Thank you.

13 MR. GOTTLIEB: Forgive me for skipping Mr. Yarm,
14 Your Honor.

15 THE COURT: I didn't catch that. I'm sorry.

16 MR. GOTTLIEB: I just said forgive me in the roll
17 call I inadvertently omitted Mr. Yarm from my Morrison Cohen
18 colleagues. Apologies for that.

19 THE COURT: All right. Thank you, Mr. Gottlieb.
20 I think I --

21 MR. LEWIS: Your Honor?

22 THE COURT: Sorry. Go ahead.

23 MR. LEWIS: This is Matthew Lewis. While you're on
24 those defendants, I'm local counsel for the defendants and
25 relief defendants represented by Morrison Cohen.

1 THE COURT: Right. Thank you.

2 Okay. I think next usually we heard from
3 Mr. Baker. Are you with us, Mr. Baker? There you are.

4 MR. BAKER: I am. And I represent Mr. Brendon
5 Stangis.

6 THE COURT: Thank you.

7 Let's see. Mr. Grundvig, I think you have been
8 next in the roll call.

9 MR. GRUNDTVIG: Thank you, Your Honor. Adam
10 Grundvig of Kesler & Rust for Matthew Fritzsche, who is here
11 today.

12 THE COURT: Thank you.

13 Miss Nuvan?

14 MS. NUVAN: Good morning, Your Honor. I typically
15 represent defendant Ryan Bowen, but Maria Windham is actually
16 here on behalf of Ryan Bowen today.

17 MS. WINDHAM: Good morning, Your Honor. I
18 represent Ryan Bowen together with Emily Nuvan and Jamie
19 Thomas. And I see that there is an attendee named Ryan Bowen
20 on the phone. I believe that is Brittany Bowen, who is a
21 representative of Ryan Bowen.

22 THE COURT: Did you say Brittany Bowen is a
23 representative of Brian Bowen? Is that what you said?

24 MS. WINDHAM: Of Ryan Bowen, yes.

25 THE COURT: Of Ryan Bowen. I don't know what that

1 means, representative. You mean counsel?

2 MS. WINDHAM: No. She is his girlfriend and has
3 been participating. She's a co-client of ours with Ryan
4 Bowen.

5 MR. BOWEN: And Ryan Bowen is here, also.

6 THE COURT: All right. Okay. All right. I think
7 based on what you've just said, Miss Windham, we'll let that
8 be.

9 Mr. Woodwell, I think you're next.

10 MR. WOODWELL: Thank you, Your Honor. Keith
11 Woodwell, Thomas Brady and Katherine Pepin from Clyde, Snow
12 and Sessions. We represent defendants Daniels, Schuler and
13 Parker as well as B&B Investment Group and BW Holdings.

14 THE COURT: Thank you.

15 Let's see. Ms. Magee, I think you were next in our
16 roll call.

17 MS. MAGEE: Good afternoon. Jessica Magee from
18 Holland & Knight for the receiver. And I'm joined by Eric
19 Schnibbe, our local counsel from McNeill Von Maack.

20 THE COURT: Right. Thank you.

21 Mr. Franklin? No Mr. Franklin today. I'm trying
22 to remember now who -- he's the one person on this list for
23 whom -- I think he joined us late last time, and I didn't
24 catch the name of his client. Mr. Franklin, no?

25 All right. Is there anyone else joining us as

1 counsel who hasn't made an appearance today who intends to be
2 heard or speak?

3 MS. SMITH: Your Honor, I don't know that I intend
4 to be heard today, but this is Kathryn Smith and I'm present
5 on behalf of Calmfritz Holdings, LLC, and Calmes & Co. And
6 I'm with the law firm Cohn Kinghorn. I'll be entering a
7 notice of appearance today.

8 THE COURT: Okay. Thank you.

9 All right. Let me preview what I think is going to
10 happen today and then provide an explanation and then hear
11 from all of you. At times some of the things that I may say
12 today may sound a little dramatic, and I'm not saying them to
13 be dramatic or hyperbolic or colorful. I just plan to be as
14 plain and direct as I can be. But I also want to ensure that
15 I don't minimize what I have what I think are serious concerns
16 that I have about what's happened at times in this case, at
17 least as best as I understand it.

18 Let me add a few more caveats before I begin.
19 First, I've not made any final conclusions or decisions about
20 what I'm about to say. I'm just making observations about
21 what I think I witnessed and what I think to be the case.
22 Second, for purposes of our discussion today I'll just assume
23 for purposes of our discussion that the Commission has made a
24 strong showing of a likelihood of success on the merits in
25 connection with their efforts to obtain and their successful

1 efforts to obtain the TRO in this case.

2 My friend and former colleague Judge Benson who
3 over the course of his quite distinguished career served as
4 the US attorney here in the District of Utah for a time before
5 serving as a district judge on this court for I think 30 years
6 or so would often say that the prosecutorial discretion is the
7 single greatest unchecked power in our Democratic system of
8 government. And I think that the power that the lawyers for
9 the Securities and Exchange Commission has is of a kind with
10 that prosecutorial discretion that Judge Benson used to talk
11 about.

12 What I think we're going to do today is probably
13 dissolve the TRO, discuss a plan for transitioning the
14 receivership, and I suspect we'll talk about an order to show
15 cause that at least right now I think I likely will be
16 issuing, ordering the Commission to show cause why I shouldn't
17 hold the SEC in contempt. I don't say anything of that
18 lightly.

19 Let me briefly explain why I think those are things
20 that might be done today. I might have said briefly. That's
21 probably unfair. I don't think this is going to be brief.
22 But let me describe my thinking and try to be as transparent
23 as I can be.

24 The Commission filed this case in late July and
25 immediately sought an ex-parte temporary restraining order

1 under Rule 65(b) in the Federal Rules of Civil Procedure. I
2 was out of town for a speaking engagement, a conference when
3 the case was filed. I was the third judge assigned to the
4 case, and there was some delay getting me assigned and getting
5 a date set for an ex-parte hearing. That was concerning to me
6 under the circumstances because reading the materials I could
7 see that the Commission's position was that we had immediate
8 ongoing irreparable injury in this case and that the Court's
9 intervention was essential to stop that harm.

10 And I guess that's where I begin. I begin with the
11 fact that we were here in an ex-parte context under Rule 65(b)
12 which requires any party seeking ex-parte injunctive relief to
13 file a certification by counsel including specific facts
14 demonstrating the irreparable, immediate and irreparable harm
15 that the applicant will suffer in the absence of the
16 injunctive relief sought.

17 So the first thing I read was a Rule 65(b)
18 certification that was filed in the case by Mr. Welsh. I have
19 that with me here. I'll just note I was struck by something
20 as I read this. I read this while I was out of state
21 preparing for the hearing the next day. I read all of the
22 Commission's -- that's not right. I read the Commission's
23 brief in support of the TRO, I read the complaint, and I read
24 some of the attached materials because of the time involved in
25 trying to get this case to hearing in an ex-parte context. I

1 did not read all of the underlying affidavits.

2 I was struck when I read the Rule 65(b)
3 certification by something that Mr. Welsh said. I just
4 thought it was unusual. Mr. Welsh said in connection with his
5 background and the background in this case in Paragraph 3, he
6 said that he was informed and believed that on at least seven
7 occasions in the last 10 years the Commission Salt Lake
8 regional office had sought and obtained emergency and/or
9 ex-parte relief for the protection of defrauded investors in
10 cases filed in this district. And he goes on to talk about
11 the fact that in some instances some of the defendants were
12 eventually held in contempt or violated TROs and injunctions
13 and the like.

14 And I thought that was a strange thing to read.
15 And I didn't think much of it at the time, but in reflecting
16 on where we are I'm struck by, I think the significance of
17 that commentary is to say, Judge, our office is familiar with
18 this. We understand this process, and you and your colleagues
19 regularly entertain this kind of relief and enter these kinds
20 of orders. We know what we're doing. You can trust us.

21 In the very next paragraph this is what Mr. Welsh
22 says. He says that, evidence obtained by the Commission and
23 set forth in -- and now I'm paraphrasing -- the six filings
24 that we've made in this case in connection with the ex-parte
25 application for the TRO, evidence obtained by the Commission

1 indicates that defendants are currently in the process of
2 attempting to relocate assets and investor funds overseas
3 where at least Jacob Anderson has contended that those assets
4 will be outside the reach of US regulators.

5 I think that statement is partially false or at
6 best misleading. I've watched the YouTube video of
7 Mr. Anderson that was referenced by the parties and by the
8 Commission. I don't think it can fairly be characterized that
9 Mr. Anderson said he was placing, he was working on placing
10 assets outside the reach of US regulators. I think he talks
11 about moving his operations to Dubai for reasons that he
12 explains. And this of course becomes one of the two lynchpins
13 of the Commission's efforts to establish irreparable injury
14 when we get to the hearing that we had.

15 I also don't think it's true based on the record
16 before me that at the time this affidavit was -- or it's a
17 declaration, well, it's a certification, Mr. Welsh. I don't
18 think there's evidence that establishes that the defendants
19 were currently in the process of relocating assets and
20 investor funds overseas. I don't think there's any evidence
21 of that before me in this case. The closest I think we get is
22 a \$35,000 wire transfer with a memo. It's referenced in the
23 papers. It's the June 16, 2023, wire for \$35,000 from DLI to
24 Brannon with a memo line, set up office in UAE. That transfer
25 was roughly six weeks before the Commission made this

1 certification and filed this action. I don't see evidence
2 before me, though the Commission will tell me if I'm just
3 missing it, that there were contemporaneous efforts relocating
4 assets at the time the TRO was filed.

5 Immediately after that sentence that Anderson has
6 contended that those assets will be outside the reach of
7 US regulators -- and let me say, let me pause and just say on
8 this point. This discussion has broken down in the papers
9 into an argument I think about whether the company's
10 operations were moved to Dubai in 2022 or whether that move
11 was still underway as late as the filing of this application
12 because there was still an office in Utah and still a bank
13 account in Utah. It's wholly immaterial in my mind. The
14 reason the Commission cited this fact and I relied on it I
15 think has to be because it was trying to make a showing of
16 irreparable harm, which in connection with the application for
17 the TRO was premised on the idea that the defendants were
18 secreting assets out of the country to place beyond the reach
19 of the court, so in the event that the Commission was
20 successful in proving the fraud that it alleges in this case
21 the investors would be harmed because there would be no
22 ability to recover.

23 So I'm not surprised that the Commission in this
24 certification focused on assets being moved even though
25 Mr. Anderson did not say that in his YouTube video.

1 In the very next sentence that follows, it's
2 Paragraph 6, and I observe that a Paragraph 5 is missing or
3 it's just mis-numbered or something. Paragraph 6 begins, for
4 example. This is the very next sentence after discussion
5 about relocating funds overseas.

6 This is what Mr. Welsh says: For example, bank
7 records obtained by the Commission and summarized in the
8 declaration of the Commission's accountant, and forgive me, I
9 know I'm going to butcher this. And I don't know whether it's
10 a Mr. Zaki or Ms. Zaki, but Mr. Welsh says: The Commission's
11 accountant Karaz S. Zaki appended to the TRO motion as
12 Exhibit 3. All of that shows that on June 26, 2023, defendant
13 IX Global, LLC, the multilevel marketing entity through which
14 the defendants node licenses are primarily promoted began
15 closing bank accounts in the United States and removed over
16 \$720,000 in putative investor funds from those accounts.

17 That sentence is also literally false in at least
18 one respect. I think the evidence before the Court now
19 demonstrates that defendant IX Global did not close those
20 accounts, the bank closed those accounts, though I assume for
21 purposes of this hearing the Commission did not know of that
22 at the time.

23 More importantly I think related to the effort to
24 obtain an ex-parte TRO the clear inference of this statement
25 is that this is an example, as those words are used in this

1 paragraph, this is an example of the defendant's current
2 efforts to relocate its assets and investor funds, but that's
3 not true. The \$720,000 that were removed from those accounts
4 when they were closed by the bank were deposited into a
5 Mountain America Credit Union account in Sandy, Utah, not in
6 Dubai, not in the UAE. I think that statement is literally
7 false or at best misleading.

8 So then we get to the Commission's application for
9 the TRO. It's Docket Number 3. And just to recite history
10 that we're all familiar with now, we set the hearing on an
11 expedited basis. We proceeded ex-parte without notice to
12 defendants. Related to that I should say that I drew some
13 inferences in this case based on the Commission's filings, and
14 some of them may not be justified, and I acknowledge that I
15 have some responsibility for failing to catch some things that
16 should have caught my attention I think and should have
17 suggested some further investigation by the Commission
18 including the fact that -- well, so we get to the application.
19 In preparation for that hearing and having carefully reviewed
20 the materials submitted by the SEC, I concluded that the SEC
21 had failed to brief the correct standard for obtaining
22 injunctive relief in the 10th Circuit.

23 Now I may be wrong, and the Commission regularly
24 files applications for injunctive relief reciting that
25 Second Circuit decision from 1990, and there's a handful,

1 there's more than a handful of cases I think, and it's not
2 just the SEC. I've seen the same in briefing from the Federal
3 Trade Commission. I can't remember if I've seen other
4 agencies make this argument, that they need not demonstrate
5 irreparable injury in order to obtain a TRO. I think
6 otherwise after the Supreme Court decision in Winter, which I
7 think left room for circuits to sort of establish their own
8 standards, at least within a certain range, the 10th Circuit
9 reads Winter to say that you can't relax any of the four
10 elements of a Rule 65 showing for injunctive relief.

11 So my view is, and I expressed this to the
12 Commission's counsel at the hearing, that the application was
13 deficient because there was not even an argument let alone an
14 attempt to establish irreparable harm. And I said that I was
15 not prepared to grant a TRO when the Commission had not made
16 such a showing.

17 And then for reasons that I think are, I don't know
18 how clear they are on the transcript and the hearing, but what
19 I was struggling with was trying to figure out whether to
20 require the Commission to work over the weekend to prepare a
21 revised application or whether there was information in the
22 application and supporting materials that could establish
23 irreparable injury. They just hadn't been argued that way by
24 the Commission.

25 So there was a back and forth of counsel. We took

1 an extended recess and after further consideration we had an
2 exchange with the counsel, and I ultimately concluded given
3 the exigency of the circumstance and so long as counsel
4 wasn't -- gosh, now I don't have a clear memory on this and I
5 didn't focus on this directly, the material part of this. I
6 had a discussion with the Commission's counsel on this
7 question of irreparable injury, and this is what counsel said.
8 A couple things. I'm going to start with this. I'm reading
9 from Page 9 of the transcript, beginning on Page 18, Mr. Welsh
10 is speaking to the Court, and he says:

11 But to the irreparable harm I would submit,
12 Your Honor, that from briefings that we have pointed
13 out defendants are moving assets overseas.

14 Are moving assets overseas. I think that's not
15 established now.

16 They had said in videos that the reason they're
17 doing this is to avoid SEC jurisdiction.

18 And I think that is literally true, but misleading
19 under the circumstances. It's clear as I said in watching the
20 YouTube video that Mr. Anderson is responding to a question
21 asked by somebody who is in the chat asking about the SEC's
22 position about crypto. And Mr. Anderson in his response talks
23 about the ambiguity and the lack of direction and clarity from
24 the Commission which exposes companies including some in this
25 case in Mr. Anderson's view to risk if they operate here

1 without clear guidance. Mr. Anderson relates, and I have no
2 idea whether this is true, but this is what he says, is that
3 Dubai has given very clear guidance, and he's made a decision
4 to move his company's operations somewhere where he knows what
5 the law would require, and the gist of it is so he can comply.

6 And I agree that he does say at the end of that
7 explanation, so they would be under the jurisdiction of, I
8 don't remember if he says Saudi Arabia, Dubai or the UAE, but
9 he does go on to say, and not the SEC.

10 In the context of this application I inferred, and
11 I don't think, the Commission did not say this, so this isn't,
12 I don't put this at the Commission's feet. But reading the
13 papers I was led to believe that the defendants were aware of
14 an ongoing SEC investigation. I now think that that's not the
15 case. And I think that that's unusual, though I know it's not
16 unprecedented, and I'm no expert on SEC matters.

17 What I do know is that Mr. Anderson's statement is
18 material in showing a fear or irreparable injury, the risk of
19 irreparable injury, if the point is aware of an SEC
20 investigation this man is moving his companies and his
21 operations and assets overseas. This characterization of
22 Mr. Anderson's comment in that video take on a different color
23 I think in the context that the defendants were unaware of the
24 investigation at the time. And in any event, what the
25 Commission doesn't explain either in the hearing or in his

1 papers or anywhere is any context for the statement. It is
2 ironic, I think, and now it's going to sound like I'm
3 quibbling, and I don't mean to be, but I think the Commission
4 is going to make the argument in this case that some of the
5 defendants here engaged in securities fraud because they made
6 representations without providing additional information that
7 placed those representations in context so an investor or
8 potential investor could assess the reliability of those
9 statements.

10 I would have had a very different view of this
11 summary statement about Mr. Anderson placing his operations
12 outside the jurisdiction of the SEC had I understood the
13 context in which that statement was made. The SEC made no
14 effort to place that statement in context.

15 But more troubling to me is what Mr. Welsh said
16 later in this exchange. I'm reading now from Page 20 of the
17 transcript from this hearing beginning at Line 9. I think
18 this is after I've gone on to say that I have concerns, I'm
19 going back to the language of the Diné Citizens case talking
20 about the, I said the language from the 10th Circuit seems
21 clear and unequivocal that we have to establish, I go on to
22 say, irreparable injury, and this is the exchange that follows
23 after I say, I say more, that I think this is a disfavored
24 injunction in the 10th Circuit so there's a heightened burden
25 for the applicant. But I say:

1 But I'm eager to hear what else, if anything
2 you would like to add, Mr. Welsh, on the remaining
3 elements.

4 Thank you, Your Honor. At the outset I
5 appreciate Your Honor's candor with respect to
6 the concerns regarding reaching each of the elements.
7 This is -- the decision to bring this TRO is not a
8 decision we take lightly, either.

9 Just as we were on break, I was reminded by
10 investigative staff with respect to the respect to
11 the investigation which remains ongoing that even
12 in the last 48 hours, defendants have closed
13 additional bank accounts. And I believe the number,
14 I don't have it in front of me, was around 33 bank
15 accounts have been closed.

16 That statement is literally false. It's
17 also highly leading. And Mr. Welsh may say and the Commission
18 may say the reference at the end to 33 bank accounts having
19 been closed wasn't meant to say that they'd been closed in the
20 last 48 hours, but that's clearly how it reads and that's how
21 I construed it in the context of the hearing.

22 I'll tell you this was the single most important
23 fact shared with me in considering the TRO in deciding whether
24 there was material harm, eminent risk of injury. It's false.
25 It is not true that the defendants closed any bank accounts in

1 the 48 hours before the hearing.

2 The defendants point this out in their motion to
3 dissolve more on that in a moment, well except let me say I
4 don't think the Commission takes the position that that wasn't
5 false. In its papers the Commission does not attempt to
6 defend that statement.

7 What is more troubling about this statement is it
8 was made with another SEC prosecutor on the screen in the room
9 and at least two SEC investigators. Nobody stopped to correct
10 the record. Nobody stopped to clarify. Nobody stopped to say
11 anything about this misrepresentation.

12 It gets worse. When the defendants in their motion
13 to dissolve the TRO explained that no bank accounts had been
14 closed in the last 48 hours -- I'll also say what the
15 Commission said is the defendants have closed bank accounts.
16 That's also false, but I assume the Commission did not know
17 that was false at the time.

18 Then in a motion to dissolve the TRO the defendants
19 pointed out no bank accounts were closed in 48 hours. In
20 fact, I think what the defendants say, and this is not true,
21 it's just not correct, no bank accounts were closed in 2023, I
22 think is what the defendants say, at least some of the
23 defendants. There were bank accounts closed in 2023. There
24 were some accounts closed in January and some in June, but
25 none in July and none within 48 hours of the hearing that we

1 had.

2 So the defendants point this out in their motion to
3 dissolve the TRO, and they're very clear about it. And the
4 defendants specifically take issue with two of the statements
5 made by the Commission, and they focus first on this question
6 about even in the last 48 hours they quote that language on
7 Page 10 of the motion to dissolve, Docket 132. And they say
8 that that was false.

9 And, I'm sorry. I was -- I now have in front of me
10 what the defendants say. These are Mr. Gottlieb's clients.
11 They say that no bank account closures involving DLI, the
12 defendants or the relief defendants occurred in July of 2023.
13 I think that is correct. So my apologies. So this is
14 squarely presented to the Commission and the opposition.

15 The Commission responds in Docket 168, this is
16 styled, Plaintiff's Opposition to the DLI Defendants Motion to
17 Resolve the Temporary Restraining Order. I'm reading now from
18 Page 10, but the relevant discussion is in Section B on Page 9
19 to 11 where the Commission's making the argument that it has
20 shown irreparable harm absent issuance of the request of
21 relief.

22 The SEC goes on to say in their motion the DLI
23 defendants ignored the evidence that the Commission cites here
24 in their brief, that the evidence that the DLI defendants were
25 relocating operations, now it's operations, not assets, to UAE

1 and transferring investor funds to unreachable overseas
2 accounts.

3 In their motion the DLI defendants ignore this
4 evidence and instead cling to two lines from the TRO hearing
5 to claim that the SEC failed to establish irreparable injury.
6 Those two lines being, the first being the fact that bank
7 accounts had been closed in 48 hours. And this is what the
8 Commission says.

9 Well, let me say, I'll just summarize first and
10 then I'll read it. Rather than engage with what the
11 Commission actually said to me in that hearing, the Commission
12 mischaracterizes the statement that the Commission made in the
13 hearing. Here's what they say.

14 Further, mere days before the TRO hearing
15 consistent with counsel's representation to the Court the SEC
16 learned that a substantial portion of the funds held in two
17 bank accounts controlled by the defendants including one
18 controlled by DLI had been substantially drained of assets.

19 That is a mischaracterization of the representation
20 that counsel made to me, and they knew it because it had been
21 recited and quoted in the defendant's motion to dissolve.
22 That's not what the counsel said. Had counsel said this, it
23 would have led to further discussion about, tell me about
24 that. What are the nature of the withdrawals? Which
25 accounts? Is there evidence that that's an attempt to

1 dissipate or secret assets? Could it be business expenses,
2 the routine business expenses? We didn't have that discussion
3 because the statement was the accounts were closed by the
4 defendants.

5 In support of this contention that's consistent
6 with their prior representation the Commission had learned
7 that a substantial portion of the funds held in two accounts
8 had been transferred or substantially drained of assets. The
9 Commission cites two sources. The first is Zaki's initial
10 declaration at Paragraph 10, which provides no support for the
11 Commission statement. The second cite is Zaki's supplemental
12 declaration in Paragraphs 10B and 10C.

13 In short what those paragraphs establish is that
14 there was a \$50,000 withdrawal in one of the accounts or a
15 reduction at least in the value of the account in the days
16 leading up to the TRO, and then in the second account that's
17 referenced by Saki in his or her declaration the account went
18 from about \$690,000 to about \$390,000, I think, about a
19 \$300,000 reduction in the value.

20 Maybe that's substantial draining of assets. I
21 don't know, and I don't want to quibble, but that's not what
22 the Commission said at the hearing. It's not what I relied on
23 in issuing the TRO.

24 There's more, but I think I'll pull up here and
25 just say -- oh, no. I want to add this, as well. This

1 doesn't go to an order to show cause that may or may not issue
2 to the Commission, but it goes to the sufficiency of the
3 Commission's showing in the papers.

4 I conclude based on my review of everything in the
5 record that the TRO was improvidently granted in the first
6 case. And I was quite surprised that after having a receiver
7 in place for about two months that the only new information
8 the Commission produced to show a likelihood of irreparable
9 harm absent the TRO is the reduction in value in those two
10 accounts that I just mentioned totaling about \$350,000 and I
11 think without any forensic analysis about where those monies
12 went.

13 I will say having reviewed the Saki declaration,
14 and I think I'm thinking about Exhibit A to the supplemental
15 declaration, the net value of proceeds in the accounts that
16 Saki analyzes actually increased over \$600,000 over the period
17 that's analyzed. Now that may be investor funds that were
18 unlawfully or improperly obtained or who knows what they are.
19 There's not an assessment of it. But there are many concerns.

20 On balance, in addition to concluding that the TRO
21 was improvidently granted in the first case I think there is
22 no evidence before me that would establish the propriety of
23 that injunction today under the Rule 65 factors. So I think
24 for those reasons, I think the TRO has to be resolved.

25 This leaves me with a question that I'll be seeking

1 your input about today. You know, when we're moving at light
2 speed evaluating an application for a TRO that requests among
3 other things the appointment of a receiver. There's not time
4 to negotiate the details of executing a receivership that has
5 to be done right way. It's a difficult and complex exercise
6 to jump into a situation like this and for a receiver to get
7 his or her arms around the operations and to take control and
8 to execute and discharge the duties of a receiver. I've not
9 before been in a position of dissolving a TRO and
10 receivership, but we have a luxury of some time at least to
11 ensure an orderly handoff if at the conclusion of this hearing
12 I dissolve the TRO, as I think I will. So I'll be eager to
13 hear from all of you how we can do this in the most orderly
14 and expeditious fashion.

15 And then I'm happy to hear anything that the
16 Commission staff or anyone representing the Commission wants
17 to say today about my comments, though you need not say
18 anything. The question that lingers is how under these
19 circumstances I could do anything other than issue an order to
20 show cause on contempt, and afford the Commission an
21 opportunity to respond fully after an opportunity to visit
22 with one another and evaluate more carefully the record and my
23 statements and then provide a full throated response before I
24 make any conclusions.

25 I will say that if we would dissolve the TRO today

1 I think a number of pending motions likely are moot including
2 the SEC's motion to clarify the receivership order,
3 Docket 125; the receiver's motion to clarify the receivership
4 order, Docket 144; the receiver's motion for contempt and
5 sanctions, Docket 138. The reason I think the last one is
6 moot is not that I'm impressed with the effort of some of the
7 defendants have made to comply with this court's order which I
8 take seriously, but rather the sole purpose of civil contempt
9 is to obtain compliance of the court order. And if that order
10 is vacated, there's nothing to obtain compliance with.

11 Those are just my preliminary thoughts. I
12 appreciate your patience. I've carried on for quite sometime
13 now. I wanted to be clear. I wanted to be relatively
14 complete so that you knew what I was thinking. I wanted to be
15 transparent.

16 And let me first invite the Commission to weigh in
17 in whatever order and on whatever topics you wish to address.
18 And I don't know if it will be Mr. Welsh or someone else.
19 Anyone? I'm all ears.

20 MR. WELSH: Thank you, Your Honor. My apologies
21 for being in a different office now. My Zoom crashed halfway
22 through the hearing.

23 THE COURT: I'm sorry to interrupt for a moment. I
24 can tell from my court reporter here in the courtroom we're
25 having a hard time hearing you. I think it's -- and I said

1 Ms. Coombs earlier. I apologize. My goodness. I'm sorry. I
2 know it's not Miss Coombs. Tracy Coombs is the counsel who
3 entered an appearance, the regional director. I have your
4 name in front of me somewhere. I apologize sincerely.

5 But, Mr. Coombs, go ahead, please.

6 MR. WELSH: Your Honor, this is Michael Welsh. I'm
7 on Tracy Coombs' camera because my Zoom crashed. My office is
8 still up. I apologize. It crashed halfway through the
9 meeting, so I came down here. So apologies to the court
10 reporter, as well. For the Court this is Michael Welsh from
11 the SEC speaking now.

12 Thank you, Your Honor, for that. I'll start by
13 referring to the record and transcript. And as I was looking
14 at it there are some words that I wish I clarified there. I
15 did not intend in any way intend to misrepresent to the Court.
16 What I was trying to represent with respect to the bank
17 accounts closing in that time was in connection with our
18 discussion as to whether or not we should re-file or if there
19 was sufficient information there. I did not -- I think I
20 mentioned an estimation in the record, I don't have it in
21 front of me, but I believe I said something along the lines, I
22 don't have the number in front of me, but as to the 33
23 accounts, we were referring to the 29 accounts that SEC
24 subpoenaed, 24 of which were closed. The last 48 hours as you
25 mentioned, yes, those accounts did not close. What we saw was

1 when checking the numbers when reaching out to the bank from
2 prior submissions after the application was submitted we
3 noticed withdrawals in the accounts that were substantial of
4 75 percent in one and 50 percent in the other. I understand
5 that you mentioned that it was only 30,000. But I point that
6 out just because that was the remaining DLI bank account in
7 the United States.

8 With respect to the video, Your Honor is correct in
9 saying that they were talking about with respect to avoiding
10 SEC jurisdiction for lack of clarity. But in the video you
11 said he moved operations, and then later in the video he said,
12 so we're moving to Abu Dhabi.

13 It was a covert investigation. We don't have
14 access to individual bank accounts, but we're seeing such as
15 the relief defendants IX Venture, FZCO being created in Abu
16 Dhabi receiving \$2 million from investor funds being
17 transferred there and then seeing bank accounts close on
18 June 30th, which we were alerted to when we were reaching out
19 to the banks in July.

20 THE COURT: Mr. Welsh --

21 MR. WELSH: With respect --

22 THE COURT: Mr. Welsh.

23 MR. WELSH: Yes, Your Honor.

24 THE COURT: The investor funds that you maintained
25 were transferred, am I right that whatever those transfers

1 were, and I think the most recent of those was about
2 \$1 million-something transfer in -- was it in January of this
3 year?

4 MR. WELSH: I believe so, Your Honor, yes.

5 THE COURT: And the Commission is not aware of any
6 direct transfers of monies that you contend are investor funds
7 from the United States to UAE after January of this year; is
8 that true?

9 MR. WELSH: It's true, Your Honor, to what we are
10 aware of. But I just want to point out for transparency
11 purposes, we had frozen approximately \$11 million out of 130
12 that's been raised by defendants primarily in cryptocurrencies
13 in which we have not been able to identify any of those
14 accounts. So the amounts that we pointed to were what we had
15 evidence of, which our view was it shows a pattern consistent
16 with, yes, Mr. Anderson said we're moving operations there, we
17 inferred that to be assets as well along with operations. I
18 assume it would be servers, but also where the funds were
19 going.

20 We see the accounts closing in 2022 and 2023 during
21 the time period of the offering, and we assumed and made a
22 connection there deducing that that meant that was part of the
23 operations.

24 We have not been able to obtain individual bank
25 accounts. We have not been able to obtain account records of

1 the other accounts that the defendants have said they moved
2 the funds to during that discovery process. We would have
3 certainly, Your Honor, would have included that in our
4 opposition if we had access to those records. But what we
5 were trying to do as a good faith effort to demonstrate to
6 Your Honor what our concerns were was that we were seeing this
7 money come in in massive amounts and being moved from these
8 accounts quickly, but then seeing several of the accounts
9 closed. We did not -- to be clear, we did not know the
10 reasoning for the closure of the accounts that had been
11 identified as defendants' responses to our submissions. What
12 we were seeing was that accounts were being closed at those
13 times.

14 So I just say that to give Your Honor an
15 understanding of where we were coming from in this emergency
16 action, where we identified these videos, saw what was
17 happening, and then once we started looking into the transfer
18 of funds and the accounts belonging to these companies, seeing
19 a lot of them being closed at different times and then seeing
20 a video saying moving operations and then seeing it transfer
21 funds to a UAE entity, that was the basis for us saying that
22 there is certainly an emergency, and there's a pattern here of
23 (inaudible) operations and in turn accessing (inaudible).

24 MS. COOMBS: Your Honor, this is Tracy Coombs, the
25 regional director. I hope you can hear me. We're trying to

1 sort of share a desk here.

2 But I think that we will look very carefully at
3 what Your Honor has pointed out and certainly would respond in
4 the event that there were any order to show cause with respect
5 to what was shown to the court. But we obviously take what
6 the Court has said very seriously and would gladly respond if
7 given the opportunity. Thank you.

8 THE COURT: Thank you, Miss Coombs.

9 Bear with me for a moment. I'm going to pause for
10 just a moment. We'll be in a very brief recess. Just for a
11 moment or so.

12 (Time lapse.)

13 THE COURT: Mr. Welsh, let me just ask, is there
14 anything more the Commission would like to say in response to
15 the issues that I think I placed on the table in my
16 preliminary comments?

17 MR. WELSH: Excuse me. Not at this time, Your
18 Honor.

19 THE COURT: Okay. Then I need another moment.
20 Excuse me.

21 (Time lapse.)

22 THE COURT: Okay. We'll go back on the record.
23 Thanks again for your patience.

24 Let me just say then that I think nothing that
25 Mr. Welsh just said causes me to change my preliminary view

1 that the temporary restraining order was improvidently issued
2 and that there's no factual or legal basis to support its
3 remaining in place. I think the net effect of that is that
4 I'll be dissolving the TRO, and I have a very short oral
5 ruling I'm going to give today. I'll be following this with a
6 written decision explaining in greater detail my analysis.

7 But I think the next issue that that raises in my
8 mind, and this is uncharted territory for me, is how to
9 transition a receivership. So let me ask, Ms. Magee, if you
10 have any thoughts about that.

11 MS. MAGEE: Thank you, Your Honor. I agree it's
12 uncharted territory. The receiver serves at the pleasure and
13 pursuant to the discretion of Your Honor. The receivership in
14 this matter was created and really sprang forth by extension
15 from the application for emergency and what I'll call
16 ancillary relief, the TRO, the embedded asset freeze, the
17 receivership. I believe, though I have not researched for
18 purposes of today's hearing, that the Court in its discretion
19 can determine that a receivership temporary or otherwise of
20 whatever scope is appropriate can exist or continue
21 notwithstanding the lack of emergency orders, injunctive
22 orders (inaudible), but I cannot cite you to a case at this
23 moment. We serve at Your Honor's pleasure.

24 THE COURT: Rule 66 I think seems to suggest that.
25 But I've not -- it's very ambiguous and doesn't include any

1 standards or specificity. It really seems, I mean, I think it
2 is -- I'm going to ask a question that reveals my lack of
3 knowledge about this. I don't know the receivership in this
4 context is the same as an equity receivership, but because it
5 was issued in connection with the Rule 65 injunction I think
6 it's for all intents and purposes with respect to the
7 receivership we're in equity. So I gather that means that I
8 have broad discretion to try to --

9 MS. MAGEE: Fashion a relief you believe
10 appropriate on the equity.

11 THE COURT: Fair enough. Thank you. Well said.

12 I think I interrupted you. Go ahead, Ms. Magee, if
13 there's anything more.

14 MS. MAGEE: Only that where I have seen I would say
15 similarly dissimilar situations are for instance receivers
16 that are put in place postjudgment of a litigation where
17 there's a risk of dissipation or a loss, so not an emergency
18 basis, but there is some need in the court's determination
19 that a third party, not the controllers of the entity or
20 entities themselves, should steward those companies or their
21 assets for some period of time or for some particular purpose.

22 Again I leave that to Your Honor's discretion. I
23 would say only more that the work that we have done today we
24 believe has discharged vigorously and diligently and
25 efficiently the duties outlined in the temporary receivership

1 order. So we stand ready to proceed under that order as we
2 have been or pause and determine if you would like our input
3 on how to prepare to transition, to tailor or to wind down if
4 Your Honor believes that is appropriate at this juncture. I'm
5 happy to brief any issues if you'd like our research.

6 THE COURT: Mr. Gottlieb, I think this question is
7 best directed to you, but we'll hear from anyone who wishes to
8 weigh in on this. My instinct is to provide a deadline to
9 direct counsel for the receiver and counsel for the defendants
10 to meet and confer and to submit a proposal to the court by a
11 date certain. But what's your view?

12 MR. GOTTLIEB: Your Honor, thank you very much. We
13 appreciate the Court's close and careful attention to these
14 issues. We think that in this case lives have been turned
15 upside down, businesses have been greatly hampered, jobs have
16 been lost. We can't fix the past, but I think we can remedy
17 some of these issues as soon as possible. As a result I do
18 think that the assets, the control of the companies and the
19 cryptocurrency wallet control should be transferred back as
20 soon as possible. If the entire purpose of the reason for the
21 TRO and the receivership is being vacated, I think that the
22 wisest course of action is just to return to the status quo
23 and do as well as we can.

24 I like Your Honor's suggestion about providing a
25 deadline for a meet and confer to submit a proposal. I do

1 think that that deadline should be as close in time as
2 possible given the damage that the defendants have suffered
3 and the companies have suffered in the meantime.

4 So I think the receiver should be putting work on
5 pause, and I think we should be having that meet and confer as
6 soon as possible about how to transfer control and any assets
7 back to the defendants.

8 THE COURT: Mr. Gottlieb, as you're saying that, I
9 have a slightly -- I have another idea. I think it's the
10 defendants who are maximally incentivized here to make this
11 transition happen as expeditiously and as efficiently as
12 possible. I wonder if I should place the initial burden back
13 on the defendants, and by that I mean I think I mean you and
14 your team, to file a proposal or at least exchange one, to
15 write up something to send to Miss Magee describing the timing
16 and sequence of events that you contend should happen. And
17 then the exchange of that initial sort of demand if you will
18 would trigger what I'm going to say as a 48-hour period of
19 meet and confer and then a joint report from the parties
20 48 hours following your service of your proposal to the
21 receiver's counsel. How does that strike you?

22 MR. GOTTLIEB: That's a good idea, Your Honor. I
23 think we can do that. I think we would be able to do it even
24 quicker. But certainly we can write a proposal as soon as
25 possible and send it to Ms. Magee and her colleagues in order

1 to start that 48-hour period of negotiation. Hopefully we can
2 shorten that to the extent possible.

3 THE COURT: There's a lot of counsel on this call,
4 and there's a lot of interested parties. I think this is
5 going -- it's not going to -- it may not be easy to coordinate
6 with everyone. But, Mr. Gottlieb, I'm going to charge you I
7 think with coordinating on the defense side at least so
8 there's a unified voice to the extent that's possible with the
9 receiver and we're not running the receiver around trying to
10 do inconsistent things or what have you.

11 So before I make that the order of the Court let me
12 hear from anyone else who wants to weigh in on that. And how
13 about by show of hands for counsel if you want to weigh in on
14 this or you have --

15 Miss Magee, you're first in line. There you go.
16 Go ahead.

17 MS. MAGEE: And this may be something that
18 Mr. Gottlieb and I I'm sure can discuss together, so maybe
19 this is an issue flagged and a question to be answered.
20 But --

21 Mr. Welsh, or somebody go off, please.

22 MR. WELSH: I'm sorry. We're closing that right
23 now. Sorry about that.

24 MS. MAGEE: That's okay.

25 Your Honor, again I think Mr. Gottlieb and I can

1 probably work this out together. But just in terms of your
2 own thinking for dissolution of the TRO, let's assume that
3 that were to happen at this moment in time a TRO dissolves and
4 with it an asset freeze, I would think that the two-day
5 restrains parties, some but certainly not all of them are
6 receivership entities, DLI, right? Let's just say DLI, since
7 there's been no decision on clarification that may quickly be
8 muted, we would just want to be very clear-eyed on the
9 receiver's duties and where they stop with regard to unfrozen
10 accounts continued monitor.

11 Again, I think that's something that Mr. Gottlieb
12 and I can discuss, but I didn't want the moment to pass if
13 Your Honor had a strong view on how we should approach that
14 issue.

15 THE COURT: I'm going to speak at 10,000 feet --
16 Well, Mr. Baker, go ahead. Why don't we hear from
17 counsel first. Go ahead.

18 MR. BAKER: Yeah. Again, Miss Magee is talking
19 about coordinating with Mr. Gottlieb. And as you heard me in
20 our last hearing, there's a clump of defendants, a bucket of
21 defendants, that are not similarly situated with
22 Mr. Gottlieb's position at this point. And we want to be able
23 to engage with Ms. Magee, as well.

24 THE COURT: Yes. I'm just asking you to coordinate
25 I think your efforts with Mr. Gottlieb in the first instance

1 if you can so that the receiver is not trying to answer to
2 18 different people. And I understand your interest may not
3 align with Mr. Gottlieb's, but I want you at a minimum to meet
4 and confer about where you share common ground or where you
5 made need -- he may submit a response on behalf of all the
6 defendant groups, one response from Mr. Gottlieb with the
7 input from you and Mr. Marshall and others. But to the extent
8 you can -- there's another way to do this, which is to pull
9 the string. That seems to me to be unwise right now. But let
10 me just articulate my general high level view to try to inform
11 the direction of the conversations.

12 Having concluded that the TRO is improvidently
13 granted, having rested the need for the asset freeze and the
14 receivership to address the harms that I was concerned about
15 addressing, having now decided that there's not a legal basis
16 to support that, I want the transition to be complete and
17 quick. I want the defendants to be back in control.

18 And let me say on this point. I've had this
19 thought a handful of times during this hearing, but I want to
20 be clear about this. At the -- how do I say this? I fully
21 expect counsel for the defendants in this case that you will
22 communicate to your clients the importance of ensuring that
23 there are no efforts to dissipate or remove assets during the
24 pendency of this action until we can decide this case on the
25 merits. At least some of the -- I know we're going to be

1 arguing or deciding at some point soon about whether these are
2 securities, whether the causes of action are sustainable,
3 whether there is a legal basis and the like. I don't know
4 what -- I don't know what the facts might look like at some
5 point, but if I'm presented without evidence that the
6 defendants are actively engaged in some effort to place
7 outside the scope the jurisdiction of this court assets that
8 are in question right now, which is different than operating
9 their business, business expenses and the like, we'll have
10 really serious conversations about that if we need to. I just
11 want to be clear about my expectation while I'm handing the
12 keys back to the defendants and their entities.

13 I'm sure I didn't need to say that, but I didn't
14 want it to go unsaid and then somebody say later they didn't
15 know that this was going to be a big deal. It will be a big
16 deal.

17 Who else wishes to be heard about this idea that I
18 have for the defendants to tender a plan or demand and then a
19 meet-and-confer period followed by either joint or separate
20 status reports from the parties? Anyone else?

21 Okay. Well, then that's what I'm going to direct.
22 I'm going to direct, Mr. Gottlieb, for you to meet and confer
23 first with your colleagues. I don't really mean colleagues, I
24 guess I mean the defense counsel who appeared in this case.
25 Do your best to see if you can present a clear and concise

1 plan or demand to the receiver, a plan -- I guess it's a plan
2 of action going forward, and then negotiate and meet and
3 confer vigorously. I said 48 hours because I think that's a
4 reasonable amount of time. I know that counsel will have to
5 communicate with one another and then your clients and then
6 back with one another. If you need more time just tell me
7 that. I just want to keep us on a tight timeframe, and then
8 I'll look for those status reports.

9 MR. GOTTLIEB: Thank you, Your Honor. Understood.

10 THE COURT: I think the next thing -- well, I want
11 to provide a short oral ruling, but let me first ask, what if
12 anything else we should take up while we're here together
13 today.

14 Let me start with the Commission. Mr. Welsh,
15 anything more we should take up today while we're together?

16 MR. WELSH: Just one thing for housekeeping, Your
17 Honor, related to answers for defendants. I believe last time
18 you said you wanted them all due at the same time. We had a
19 motion dismissed today, and you granted defendants' extension
20 request. We had received other extension requests from other
21 defendants. We have said that this one's your order that you
22 wanted them all at the same time. So I guess for their sake I
23 wanted to raise that and see if that's acceptable to extend
24 their answers to two weeks as well if they wish to do so.

25 THE COURT: I'm sorry if I was unclear in our

1 earlier discussion, and I don't recall what words I used
2 exactly. My intent was to try to ensure that we weren't being
3 redundant with arguments that the defendants were advancing in
4 motions to dismiss and that we consolidate the briefing to the
5 extent that it's possible preserving for individual defendants
6 consistent with their own individual circumstances to assert
7 whatever defenses or legal arguments they wanted to advance.

8 But the timing of the presentation -- maybe I did
9 talk about the timing because I didn't want the Commission
10 having to respond to, that's right, seriatim.

11 What do you propose, Mr. Welsh? That we afford all
12 the defendants the additional extension of time in the
13 deadline for filing for anyone who hasn't already answered or
14 filed a motion to just file at the same time that the Gottlieb
15 defendants are filing and then stay the Commission's response
16 on the motion we got today for that additional seven days so
17 that responsive briefing is all in alignment? Is that you
18 think the most efficient way to proceed?

19 MR. WELSH: From our perspective I think that makes
20 sense, Your Honor. But if others disagree I'm happy to hear
21 their thoughts.

22 THE COURT: I'm not going to invite a lot of
23 discussion or argument about that. I'm going to stay for
24 seven days the time for the Commission to respond to any
25 motions that are filed today. And I'm going to grant an

1 extension for all the remaining defendants through the period
2 that we granted for the Gottlieb defendants to answer. And
3 then we'll just do the best we can. It's going to be a lot of
4 paper, I think, Mr. Welsh, and we'll sort it out.

5 Okay. Anything else from the Commission,
6 Mr. Welsh?

7 MR. WELSH: No, Your Honor.

8 THE COURT: Mr. Gottlieb? I see you took yourself
9 off mute, but I can't hear you at all.

10 MR. GOTTLIEB: Your Honor, no, thank you.

11 THE COURT: By show of hands anyone else who wants
12 to be heard before I provide a short oral ruling and we
13 recess? I guess there's two screens. Hold on. No, I don't
14 see any hands. All right. So bear with me. This is short.

15 I'm going to place on the docket -- well, the
16 minute entry from this hearing will reflect that I provided
17 this short oral ruling. The effect of this ruling will go
18 into effect immediately. We will prepare and file a written
19 memorandum decision and order that more completely and more
20 fully describes the Court's action and the basis for the
21 action.

22 But as for today I'll say that a party seeking a
23 temporary restraining order in the 10th Circuit must
24 establish, first, a substantial likelihood of prevailing on
25 the merits; second, irreparable harm unless the injunction is

1 issued; third, that the threatened injury to the applicant
2 outweighs the harm that the preliminary injunction may cause
3 any opposing parties; and fourth, that the injunction if
4 issued would not adversely affect the public interest.

5 That's language from the Diné Citizens decision
6 from the 10th Circuit in 2016, where the 10th Circuit went on
7 to say: The temporary restraining orders are an extraordinary
8 remedy, so the movant's right to relief must be clear and
9 unequivocal.

10 Having carefully considered the parties' filings
11 and the parties' arguments and for at least in part the
12 reasons I've already articulated today during this hearing, I
13 am now convinced that the TRO was improvidently granted in the
14 first instance, because even considering the new evidence
15 submitted by the Commission in my judgment it has failed to
16 show irreparable harm. I'm not going to go -- because the
17 Commission has to establish all four elements and having
18 already decided they failed in one respect, I'm not going to
19 separately consider the other elements.

20 The motion to dissolve, there were several motions,
21 they are Docket Numbers 132, 145 and 159 are granted. The
22 current TRO, Docket 165, is dissolved as of now. And as I
23 said, I'll provide a written order more fully explaining my
24 reasoning.

25 Because there is no longer a TRO in place the

1 receivership order, Docket Number 10, is also dissolved. And
2 the motions I mentioned earlier, I'll recite them again, these
3 motions will can denied as moot. Docket 125, the Commission's
4 motion to clarify the receivership order --

5 Excuse me one moment.

6 (Time lapse.)

7 THE COURT: -- Docket 144, the receiver's motion to
8 clarify the receivership order; and Docket 138, the receiver's
9 motion for contempt and sanctions.

10 I appreciate your time and your patience today,
11 counsel. We'll be in recess.

12 (The court proceedings were concluded.)

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1 STATE OF UTAH)

2) ss.

3 COUNTY OF SALT LAKE)

4 I, KELLY BROWN HICKEN, do hereby certify that I am
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of
7 the foregoing matter on October 6, 2023, and thereat reported
8 in Stenotype all of the testimony and proceedings had, and
9 caused said notes to be transcribed into typewriting; and the
10 foregoing pages number from 5 through 48 constitute a full,
11 true and correct report of the same.

12 That I am not of kin to any of the parties and have
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this ____ day of
15 _____ 2023.

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KELLY BROWN HICKEN, CSR, RPR, RMR

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